IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2902 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT WATER RESOURCES DEVELOPMENT CORPORATION LTD. & 1 - Petitioner(s)

Versus

MAHENDRA BHOGILAL DAVE - Respondent(s)

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Appearance :

MR PARESH UPADHYAY for Petitioner No(s).: 1,2.

MRS SANGEETA N PAHWA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

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1.0 The petitioner Corporation has challenged the award dated 04.01.1999 passed by the Labour Court, Kalol, in

Reference (LCK) No.342 of 1988, whereby the petitioner Corporation was directed to reinstate the respondent with 50% back wages.

2.0 The brief facts of the case are that the respondent herein was working as a Rojamdar Wireman with the petitioner Corporation from 17.11.1986 onwards. It is the case of the petitioner that the respondent tendered his resignation on 03.07.1987, and, was thereafter, again taken in service on the same terms till the said post was filled up by a regular Wireman and worked during the period from 01.10.1987 to 21.05.1988.

2.1 On being aggrieved by his discontinuance from the service, the respondent approached the Labour Court by filing a statement of claim stating that his services were terminated in contravention of the provisions of the Industrial Disputes Act, 1947. The Labour Court, after hearing the parties, passed the impugned award with the aforesaid directions. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. In the impugned award, the Labour Court has recorded a finding that the

respondent workman had worked with the petitioner Corporation during the period from 01.10.1987 to 21.05.1988 thereby completing 240 days of service in the last preceding year, and therefore, by terminating the services of the respondent, breach of the provisions of Section 25(F) was committed. I am in complete agreement with the reasonings given by the Labour Court while granting reinstatement to the respondent to his original post.

4.0 However, while considering the aspect of back wages, the Labour Court has not given any cogent reasons as to on what basis it has awarded the same. In view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case. In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the order awarding

back wages is required to be quashed and set aside.

5.0 In the result, this petition is partly allowed. The impugned award of the Labour Court qua granting the respondent reinstatement to his original post is confirmed; and, the direction qua awarding 50% back wages is quashed and set aside. The respondent workman shall be entitled for all benefits for the purpose of counting his seniority as a daily wager from the date of the publication of the award. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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